



PROPERTY EASEMENTS

INTEGRATED DISCUSSIONS

WITH P.D. 1096 AND ITS REVISED IRR

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By:
ENGR. JESSIE A. SALVADOR, MPICE
Arellano University School of Law
SN: 2012-0313



EASEMENT OR SERVITUDE

-defined as a real right constituted in another person's property, corporeal and immovable, by virtue of which the owner of the same has to abstain from doing or to allow somebody else to do something in his property for the benefit of another thing or person.

(Sanchez Roman 572, cited in Property Law by Rabuya, p.120)

N.B.

Easement or servitude is a limitation over the right to exclude (fence) a (real) property.



EASEMENT OR SERVITUDE

Under R.A. No. 386 (New Civil Code):

- Easement relating to waters (Arts. 637-648)
- Easement of right of way (Arts. 649-657)
- Easement of party wall (Arts. 658-666)
- Easement of light and view (Arts. 667-673)
- Easement of drainage of buildings (Arts. 674-676)
- Easement of distances (Arts. 677-681)
- Easement on nuisance (Arts. 682-683)
- Easement of lateral and subjacent support (Arts. 684-687)



EASEMENT OR SERVITUDE

Under Presidential Decree No. 1096:

- **Chapter 2: Administration and Enforcement** (*related to nuisance*)
- **Chapter 6: Fire Resistive Requirements in Construction** (*related to party walls*)
- **Chapter 8: Light and Ventilation** (*related to party walls, light and view*)
- **Chapter 9: Sanitation** (*related to waters, drainage of buildings*)



EASEMENT OR SERVITUDE

Under Presidential Decree No. 1096:

- **Chapter 10: Building Projection Over Public Streets** (related to right of way, light and view, distances)
- **Chapter 12: General Design and Construction Requirements** (*related to lateral and subjacent supports*)
- **Chapter 20: Signs** (*related to light and view*)



EASEMENT RELATING TO WATERS

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Articles 637-648 of the Civil Code



EASEMENT RELATING TO WATERS

Art. 638. The banks of rivers and streams, even in case they are of private ownership, are subject throughout their entire length and within a zone of **three meters** along their margins, to the easement of public use in the general interest of navigation, floatage, fishing and salvage.

x x x



EASEMENT RELATING TO WATERS

Location of Water Body/Way	Easement
Urban Areas	3.00 meters per side of waterway
Agricultural Areas	20.00 meters per side of waterway
Forest Areas	40.00 meters per side of waterway



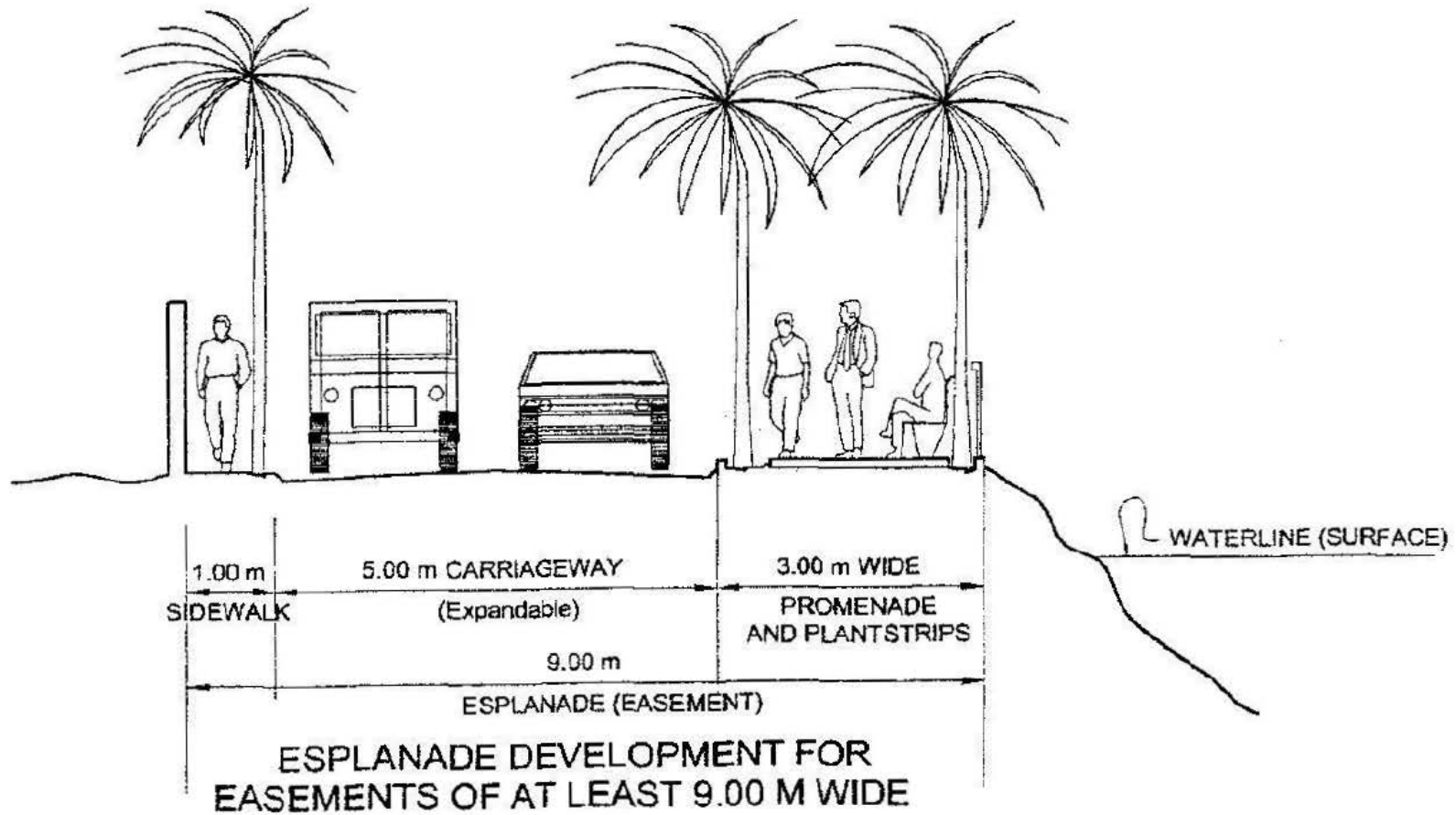
EASEMENT RELATING TO WATERS

Allowed or Encouraged Structures/Development within Easements:

- 1.If wider than 9.00 meters, the easement may include roadway/carriageway component on which vehicles can pass or which the same may park temporarily;
2. Pedestrian access-ways and the like to be located at above/below the easement may also be developed for public use (*ex. promenades*)

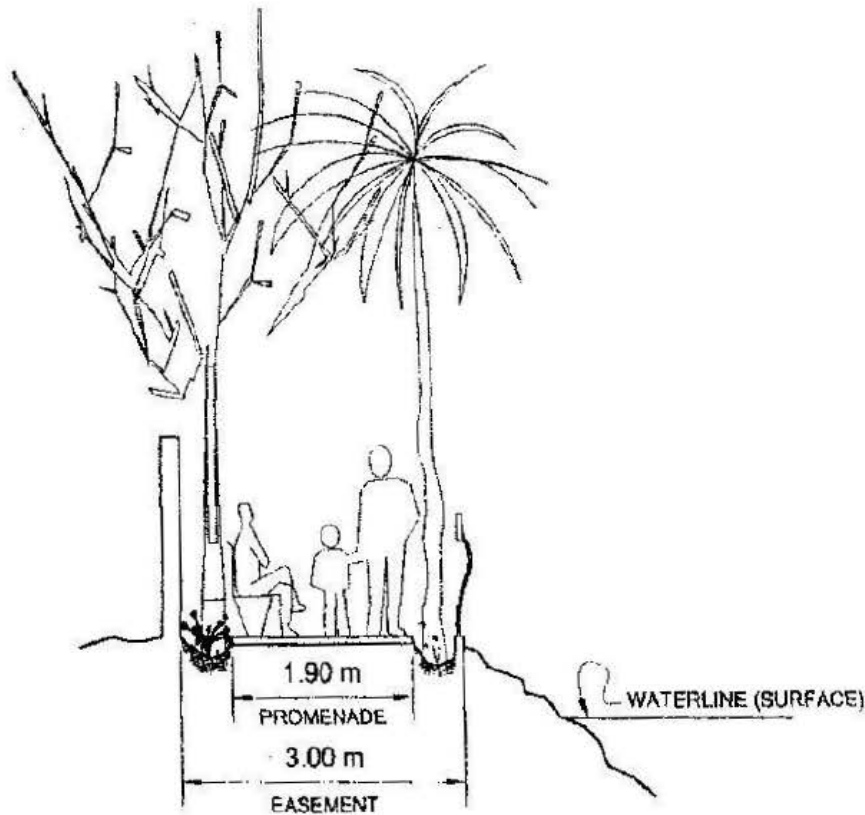


EASEMENT RELATING TO WATERS

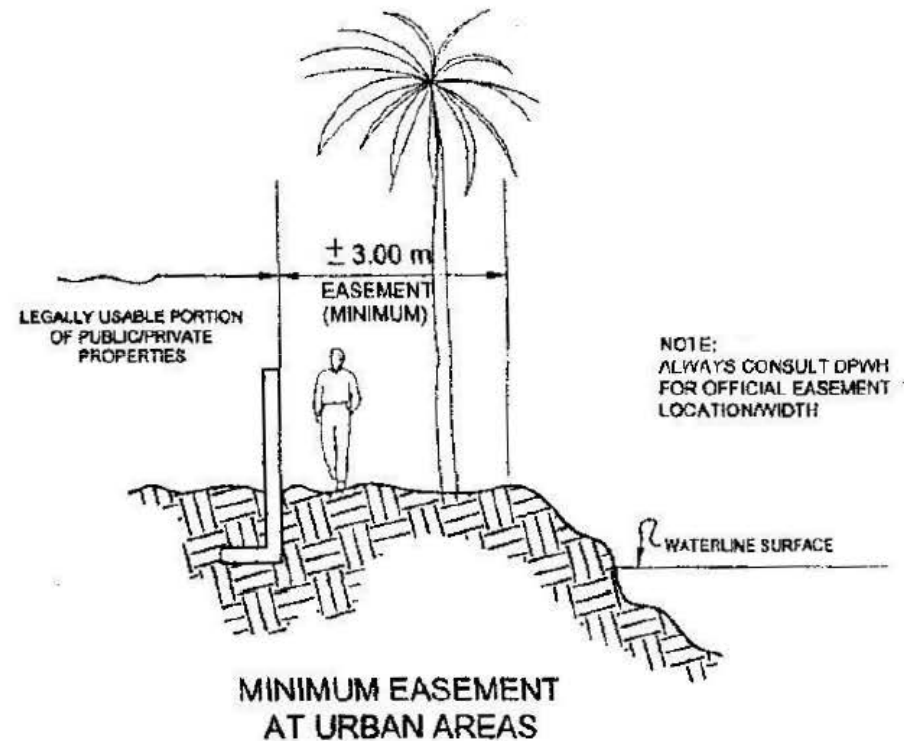




EASEMENT RELATING TO WATERS



PROMENADE DEVELOPMENT
WITHIN A MINIMUM EASEMENT
FOR URBAN AREAS





EASEMENT OF RIGHT OF WAYS

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Articles 649-657 of the Civil Code



EASEMENT OF RIGHT OF WAYS

Requirements for Compulsory Right of Way

- (1) That the dominant estate is surrounded by other immovables and has no adequate outlet to a public highway (*Art. 649, par. 1*);
- (2) After payment of proper indemnity (*Art. 649, par. 1, end*);
- (3) That the isolation was not due to acts of the proprietor of the dominant estate (*Art. 649, par. 4*); and
- (4) That the right of way claimed is at the point least prejudicial to the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest. (*Art. 650*)

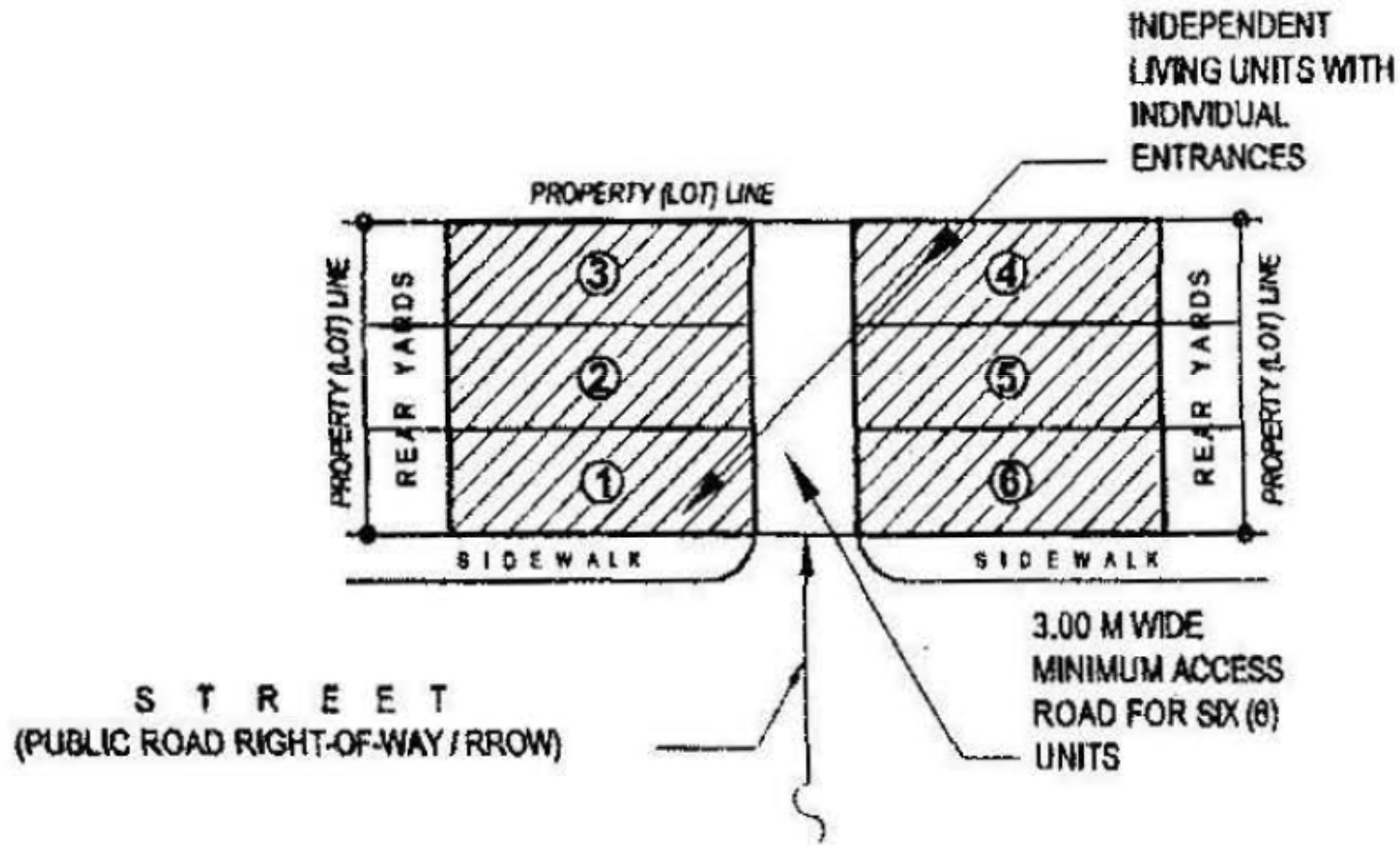


EASEMENT OF RIGHT OF WAYS

Number of Dwellings	Minimum Width of Carriageway	Minimum Width of Each Sidewalk	Minimum Total Width of the RROW
Up to six (6) units	3.00 meters	0.60 meter	4.20 meters
Seven (7) up to fifteen (15) units	4.00 meters	1.00 meter	6.00 meters
Sixteen (16) up to twenty five (25) units	5.00 meters	1.00 meter	7.00 meters
Twenty six (26) up to thirty five (35) units	6.00 meters	1.00 meter	8.00 meters
More than thirty five (35) units	6.70 meters	1.00 meter	8.70 meters



EASEMENT OF RIGHT OF WAYS





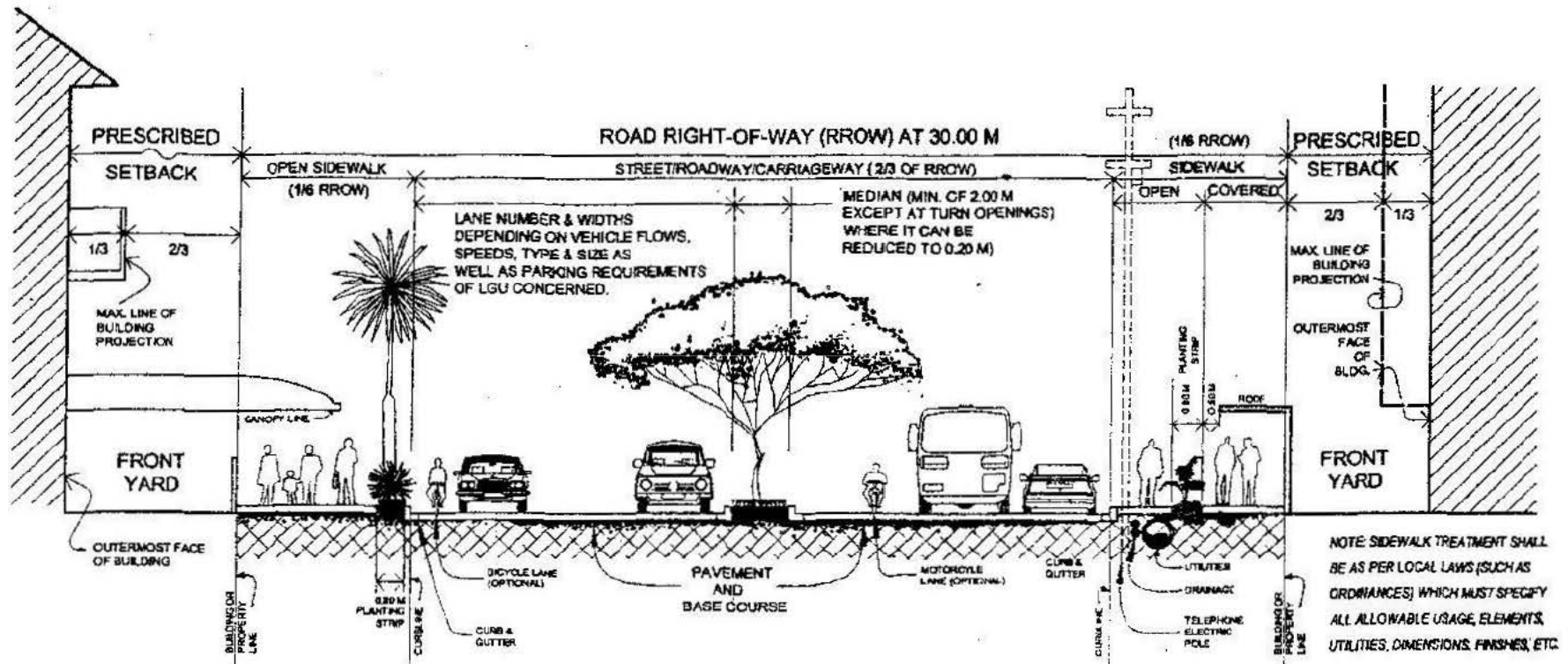
EASEMENT OF RIGHT OF WAYS

**Executive Order No. 621, s. 1980
(Amended EO 113, s. 1955)**

National roads shall have a right of way of not less than twenty **(20) meters**, provided that such minimum width may be reduced at the discretion of the Minister of Public Highways to fifteen **(15) meters** in highly urbanized areas, and that a right of way of at least sixty **(60) meters** shall be reserved for roads constructed through unpatented public land and at least one hundred twenty **(120) meters** reserved through naturally forested areas of aesthetic or scientific value.



EASEMENT OF RIGHT OF WAYS



POSSIBLE ROAD RIGHT-OF-WAY (RROW) SECTION (30.00 M)

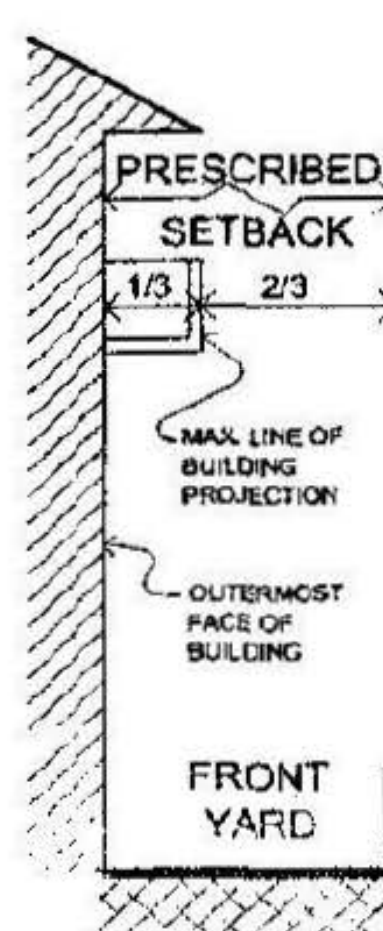


EASEMENT OF RIGHT OF WAYS

Setback is a technical term.

Setback –an offset applied and enforced over a real property, in the form of negative easement, from property line to building line, measured perpendicularly.

Front setback provides “breathing air” for streets, and provisions for future government constructions.





EASEMENT OF PARTY WALL

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Articles 658-666 of the Civil Code



EASEMENT OF PARTY WALL

Art. 658. The easement of party wall shall be governed by the provisions of this Title, by the *local ordinances* and *customs* insofar as they do not conflict with the same, and by the rules of co-ownership.





EASEMENT OF PARTY WALL

Art. 659. The existence of an easement of party wall is presumed, unless there is a title, or exterior sign, or proof to the contrary:

(1) In dividing walls of adjoining buildings up to the point of common elevation;





EASEMENT OF PARTY WALL

Art. 659. The existence of an easement of party wall is presumed, unless there is a title, or exterior sign, or proof to the contrary:



(2) In dividing walls of gardens or yards situated in cities, towns, or in rural communities



EASEMENT OF PARTY WALL

Art. 659. The existence of an easement of party wall is presumed, unless there is a title, or exterior sign, or proof to the contrary:

(3) In fences, walls and live hedges dividing rural lands.





EASEMENT OF PARTY WALL

Art. 660. It is understood that there is an exterior sign, contrary to the easement of party wall:

- (1) Whenever in the dividing wall of buildings there is a window or opening;
- (2) Whenever the dividing wall is, on one side, straight and plumb on all its facement, and on the other, it has similar conditions on the upper part, but the lower part slants or projects outward;
- (3) Whenever the entire wall is built within the boundaries of one of the estates;



EASEMENT OF PARTY WALL

Art. 660. It is understood that there is an exterior sign, contrary to the easement of party wall:

- (4) Whenever the dividing wall bears the burden of the binding beams, floors and roof frame of one of the buildings, but not those of the others;
- (5) Whenever the dividing wall between courtyards, gardens, and tenements is constructed in such a way that the coping sheds the water upon only one of the estates;



EASEMENT OF PARTY WALL

Art. 660. It is understood that there is an exterior sign, contrary to the easement of party wall:

- (6) Whenever the dividing wall, being built of masonry, has stepping stones, which at certain intervals project from the surface on one side only, but not on the other;
- (7) Whenever lands inclosed by fences or live hedges adjoin others which are not inclosed.





EASEMENT OF PARTY WALL

Art. 660. It is understood that there is an exterior sign, contrary to the easement of party wall:

x x x

In all these cases, the ownership of the walls, fences or hedges shall be deemed to belong exclusively to the owner of the property or tenement which has in its favor the presumption based on any one of these signs.



EASEMENT OF PARTY WALL

Art. 661. Ditches or drains opened between two estates are also presumed as common to both, if there is no title or sign showing the contrary.

There is a sign contrary to the part-ownership whenever the earth or dirt removed to open the ditch or to clean it is only on one side thereof, in which case the ownership of the ditch shall belong exclusively to the owner of the land having this exterior sign in its favor.





EASEMENT OF PARTY WALL

Art. 662. The cost of repairs and construction of party walls and the maintenance of fences, live hedges, ditches, and drains owned in common, shall be borne by all the owners of the lands or tenements having the party wall in their favor, in proportion to the right of each.

Nevertheless, any owner may exempt himself from contributing to this charge by renouncing his part-ownership, except when the party wall supports a building belonging to him.



EASEMENT OF PARTY WALL

Art. 663. If the owner of a building, supported by a party wall desires to demolish the building, he may also renounce his part-ownership of the wall, but the cost of all repairs and work necessary to prevent any damage which the demolition may cause to the party wall, on this occasion only, shall be borne by him.





EASEMENT OF PARTY WALL

Art. 664 and Art. 665 may be summarized in

Art. 666:

Every part-owner of a party wall may use it in proportion to the right he may have in the co-ownership, without interfering with the common and respective uses by the other co-owners.

N.B.

Every owner may improve the party wall, but it will be governed by “embellishment rule” under the regime of co-ownership.



EASEMENT OF PARTY WALL

Rules Implementing Section 703, P.D. 1096

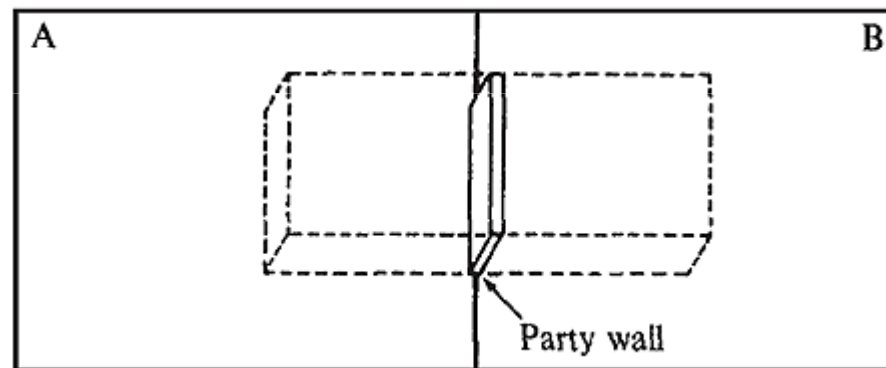
Type of Occupancy Separation	Easement
One-Hour Fire Resistive Two-Hour Fire Resistive	All openings shall be protected by a fire assembly with minimum fire rating.
Three-Hour Fire Resistive	The total width of openings in any wall in any one-storey shall not exceed 25% of the length of the wall in that storey and no single opening shall have an area greater than 10.00 sq. meters.
Four-Hour Fire Resistive	Shall have no openings therein and shall be of not less than four-hour fire resistive construction.



EASEMENT OF PARTY WALL

Rules Implementing Section 704, P.D. 1096

3. Buildings on Same Property and Buildings Containing Courts



For the purpose of determining the required wall and opening protection, buildings on the same property and court walls shall be assumed to have a property line between them. x x x

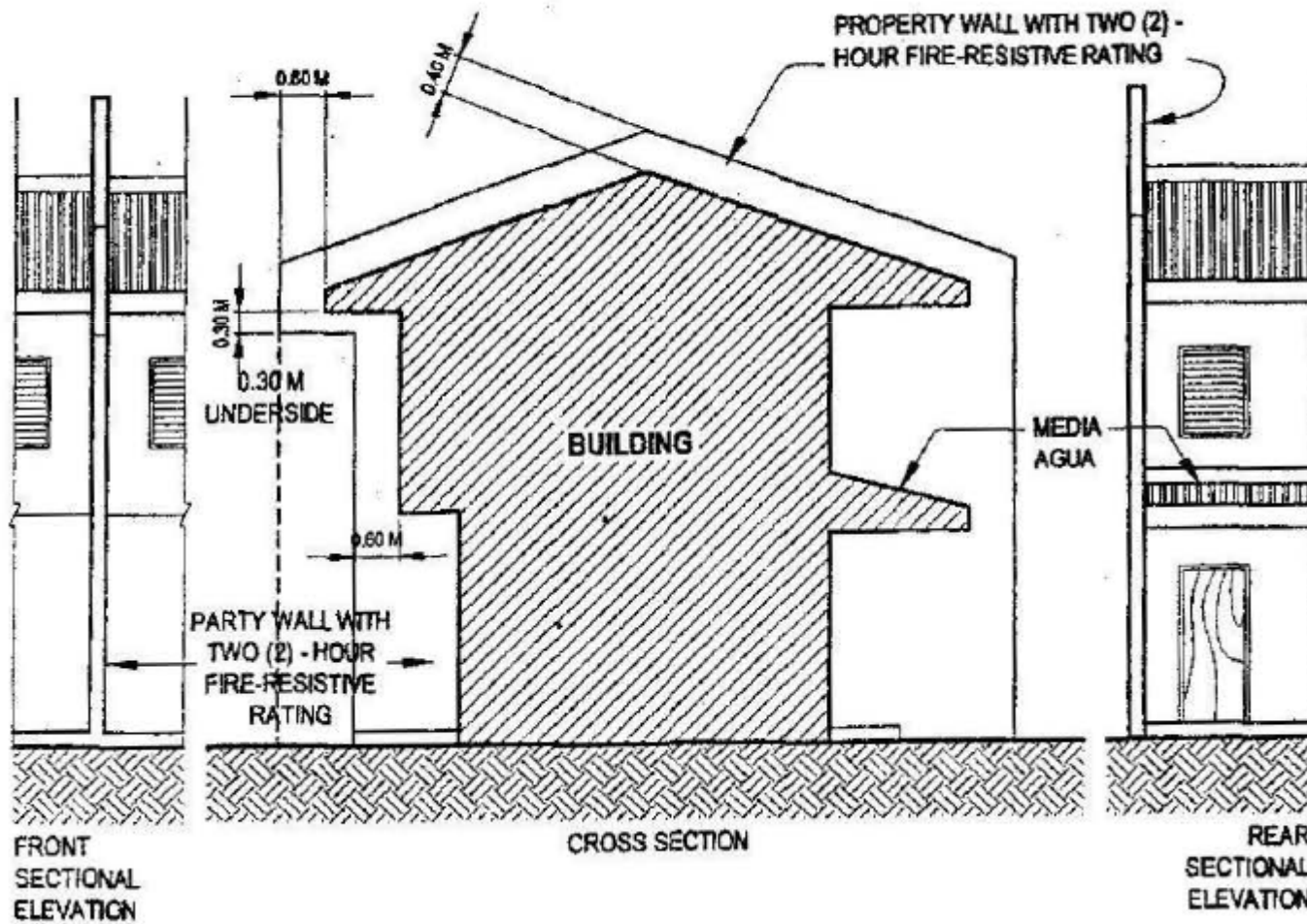


EASEMENT OF PARTY WALL

Residential Occupancy	Provisions
R-1 (low density)	Absolutely NO firewalls.
R-2 (medium density)	Maximum length of 80% of one side of property.
R-3 (high density residential)	Two (2) firewalls may be allowed, maximum of 85% length on each side, provided that the total firewall does not exceed 65% of the total perimeter. If 1-side and rear, maximum of 90% length may be allowed, up to 100% if length is only 4.00 meters, provided that the total firewall does not exceed 50% of the total perimeter.



EASEMENT OF PARTY WALL





EASEMENT OF PARTY WALL

REMEMBER:

- There is a party wall if it is situated concurrently with the property line;
- If the wall of a building was first constructed, not extending outside his property, and then the adjacent property owner attaches itself to the wall of the prior building, it does not become a “party wall” *ipso facto*;
- A party wall is presumed to be co-owned unless the contrary is provided;

Party wall, parang “party line”. Hindi na uso ngayon.



EASEMENT OF LIGHT AND VIEW

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Articles 667-673 of the Civil Code



EASEMENT OF LIGHT AND VIEW

Art. 667. No part-owner may, without the consent of the others, open through the party wall any window or aperture of any kind.

REASON:

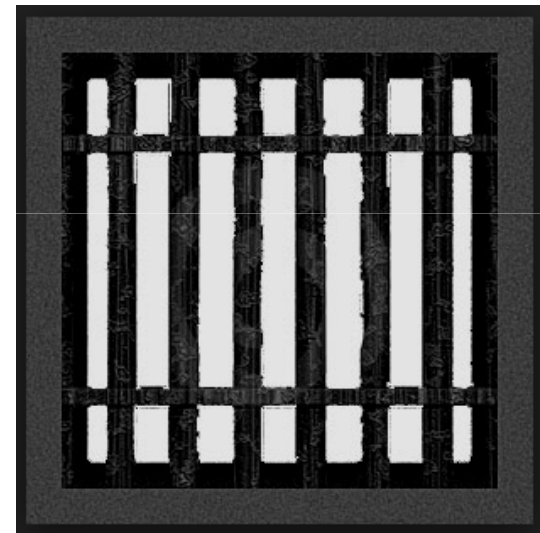
By existence of an opening, the presumption of “party wall” is defeated. [**Art. 660 (1)**] The side which benefits from opening will now be presumed to own that wall. Prescription will lie (10 years) on circumstances under **Art. 668.**



EASEMENT OF LIGHT AND VIEW

Art. 667. When the distances in article 670 are not observed, the owner of a wall which is not party wall, adjoining a tenement or piece of land belonging to another, can make in it openings to admit light at the height of the ceiling joints or immediately under the ceiling, and of the size of thirty centimeters square, and, in every case, with an iron grating imbedded in the wall and with a wire screen.

x x x





EASEMENT OF LIGHT AND VIEW

Section 808. Window Openings (P.D. 1096)

Every room intended for any use, not provided with artificial ventilation system as herein specified in this Code, shall be provided with a window or windows with a total **free area of openings equal to at least ten percent of the floor area of room**, and such window shall open directly to a court, yard, public street or alley, or open water courses.



EASEMENT OF LIGHT AND VIEW

Article 669 of R.A. 386

versus

Section 808 of P.D. 1096

Section 808 is more rational considering that the opening is based on floor area.

Art.669 requirement is 30 cm square = **0.09 sq.m**

Minimum habitable room area = 6 sq.m

Under Sec.808, 10% is equal to **0.6 sq.m**



EASEMENT OF LIGHT AND VIEW

Article 670. No windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property.

Neither can side or oblique views upon or towards such conterminous property be had, unless there be a distance of sixty centimeters.

The non-observance of these distances does not give rise to prescription.



EASEMENT OF LIGHT AND VIEW

Section 804 (P.D. 1096)

Size and Dimension of Courts.

- (a) Minimum size of courts and their least dimensions shall be governed by the use, type of construction, and height of the building as provided in the rules and regulations promulgated by the Secretary, provided that the minimum horizontal dimension of court shall be **not less than 2.00 meters**.
- (b) All inner courts shall be connected to a street or yard, either by a passageway with a **minimum width of 1.20 meters** or by a door through a room or rooms.



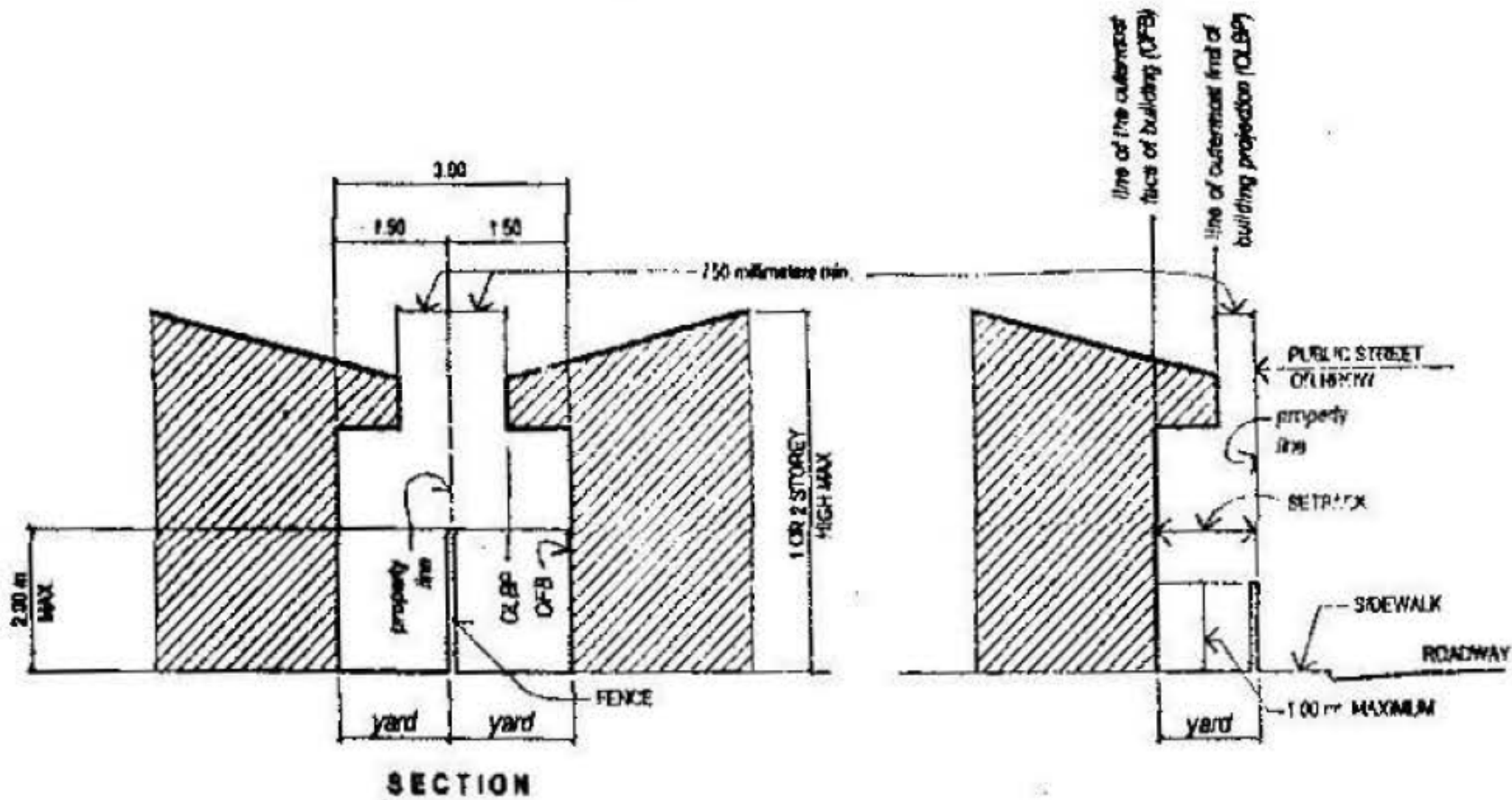
EASEMENT OF LIGHT AND VIEW

Rules Implementing Sec. 804 (P.D. 1096)

- (5) Every court shall have a width of **not less than 2.00 meters** for one (1) or two (2) storey buildings. However, if the court is treated as a yard or vice versa, this may be reduced to **not less than 1.50 meters in cluster living units** such as quadruplexes, rowhouses and the like, with adjacent courts with an area of not less than 3.00 sq. meters. Provided further, that the separation walls or fences, if any, shall not be higher than 2.00 meters.



EASEMENT OF LIGHT AND VIEW





EASEMENT OF LIGHT AND VIEW

Yard	SETBACK REQUIREMENTS Type of Residential Use/ Occupancy				
	R-1 (meters)	R-2		R-3	
		Basic (m)	Max (m)	Basic (m)	Max (m)
<i>Front</i>	4.50	3.00	8.00	3.00	8.00
<i>Side</i>	2.00	2.00	2.00	-	2.00
<i>Rear</i>	2.00	2.00	2.00	-	2.00

R-1 low density residential community

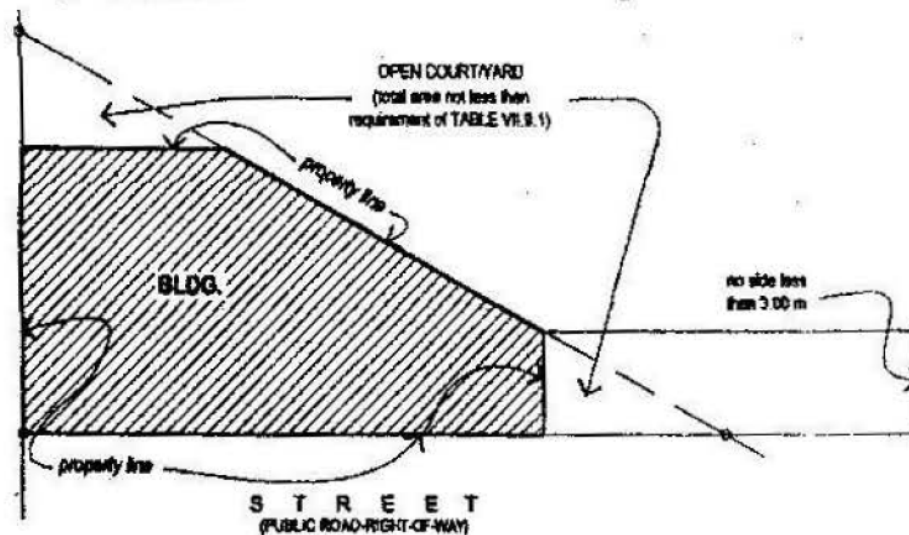
R-2 medium density residential community

R-3 high density residential community



EASEMENT OF LIGHT AND VIEW

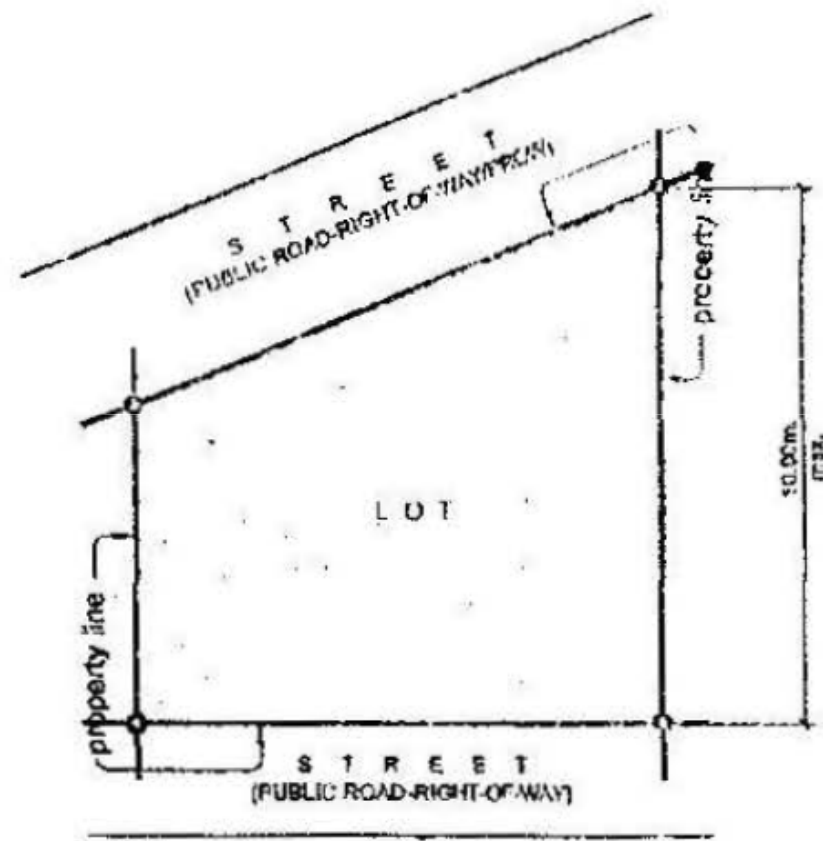
Art. 671. The distance referred to in the preceding article shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter when they do, and in cases of oblique view from the dividing line between the two properties.





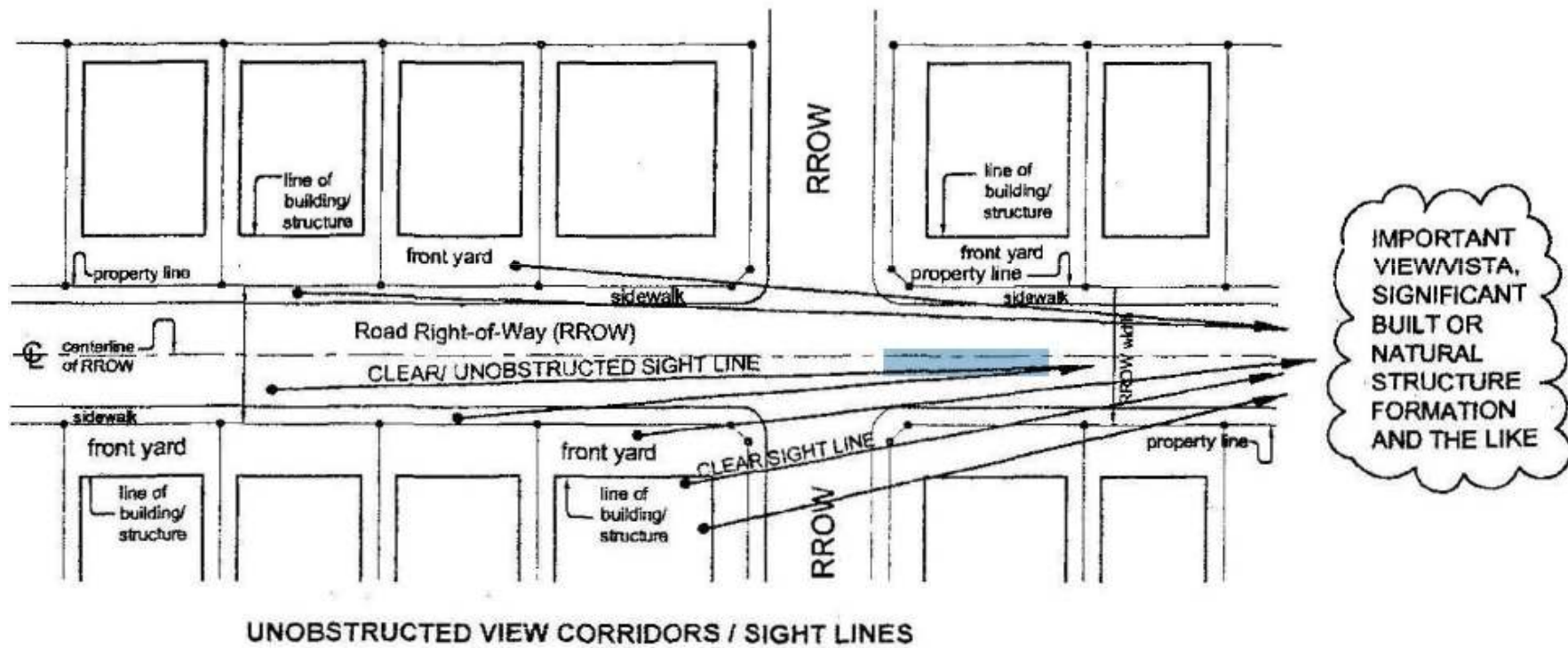
EASEMENT OF LIGHT AND VIEW

Art. 672. The provisions of article 670 are not applicable to buildings separated by a public way or alley, which is not less than three meters wide, subject to special regulations and local ordinances.





EASEMENT OF LIGHT AND VIEW





EASEMENT OF LIGHT AND VIEW

Art. 673. Whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, the owner of the servient estate cannot build thereon at less than a distance of three meters to be measured in the manner provided in article 671. Any stipulation permitting distances less than those prescribed in article 670 is void.



EASEMENT OF DRAINAGE OF BUILDINGS

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Articles 674-676 of the Civil Code

EASEMENT OF DRAINAGE OF BUILDINGS

Art. 674. The owner of a building shall be obliged to construct its roof or covering in such manner that the rain water shall fall on his own land or on a street or public place, and not on the land of his neighbor, even though the adjacent land may belong to two or more persons, one of whom is the owner of the roof. Even if it should fall on his own land, the owner shall be obliged to collect the water in such a way as not to cause damage to the adjacent land or tenement.



EASEMENT OF DRAINAGE OF BUILDINGS



Art. 675. The owner of a tenement or a piece of land, subject to the easement of receiving water falling from roofs, may build in such manner as to receive the water upon his own roof or give it another outlet in accordance with local ordinances or customs, and in such a way as not to cause any nuisance or damage whatever to the dominant estate.



EASEMENT OF DRAINAGE OF BUILDINGS

Local ordinances: simply adopts the letters of the National Building Code.

Customs:

- **GOLDEN RULE** – *“do not do unto others, what you don’t want others do unto you”*
- **“KANYA-KANYANG SALO”** doctrine





EASEMENT OF DRAINAGE OF BUILDINGS

Art. 676. Whenever the yard or court of a house is surrounded by other houses, and it is not possible to give an outlet through the house itself to the rain water collected thereon, the establishment of an easement of drainage can be demanded, giving an outlet to the water at the point of the contiguous lands or tenements where its egress may be easiest, and establishing a conduit for the drainage in such manner as to cause the least damage to the servient estate, after payment of the property indemnity.



EASEMENT OF DRAINAGE OF BUILDINGS

Rule IX Sanitation (P.D. 1096)

Section 904. Storm Drainage System

- (1) Rainwater drainage shall not discharge to the sanitary sewer system.
- (2) Adequate provisions shall be made to drain rainwater from low areas in buildings and their premises.
- (3) The drainage pipe installation and sewerage system of any premises and/or connection with any public disposal or any acceptable terminal shall conform to the **Revised National Plumbing Code of the Philippines.**



EASEMENT OF DISTANCES (CONSTRUCTIONS AND PLANTINGS)

58

Articles 677-683 of the Civil Code



EASEMENT OF DISTANCES

Art. 677. No constructions can be built or plantings made near fortified places or fortresses without compliance with the conditions required in special laws, ordinances, and regulations relating thereto.





EASEMENT OF DISTANCES

Art. 678. is being enforced by **Sec.301 of P.D. 1096**

Section 301. Building Permits.

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.



EASEMENT OF DISTANCES

Article 679. No trees shall be planted near a tenement or piece of land belonging to another except at the distance authorized by the ordinances or customs of the place, and, in the absence thereof, at a distance of at least two meters from the dividing line of the estates if tall trees are planted and at a distance of at least fifty centimeters if shrubs or small trees are planted.

Every landowner shall have the right to demand that trees hereafter planted at a shorter distance from his land or tenement be uprooted.

The provisions of this article also apply to trees which have grown spontaneously.



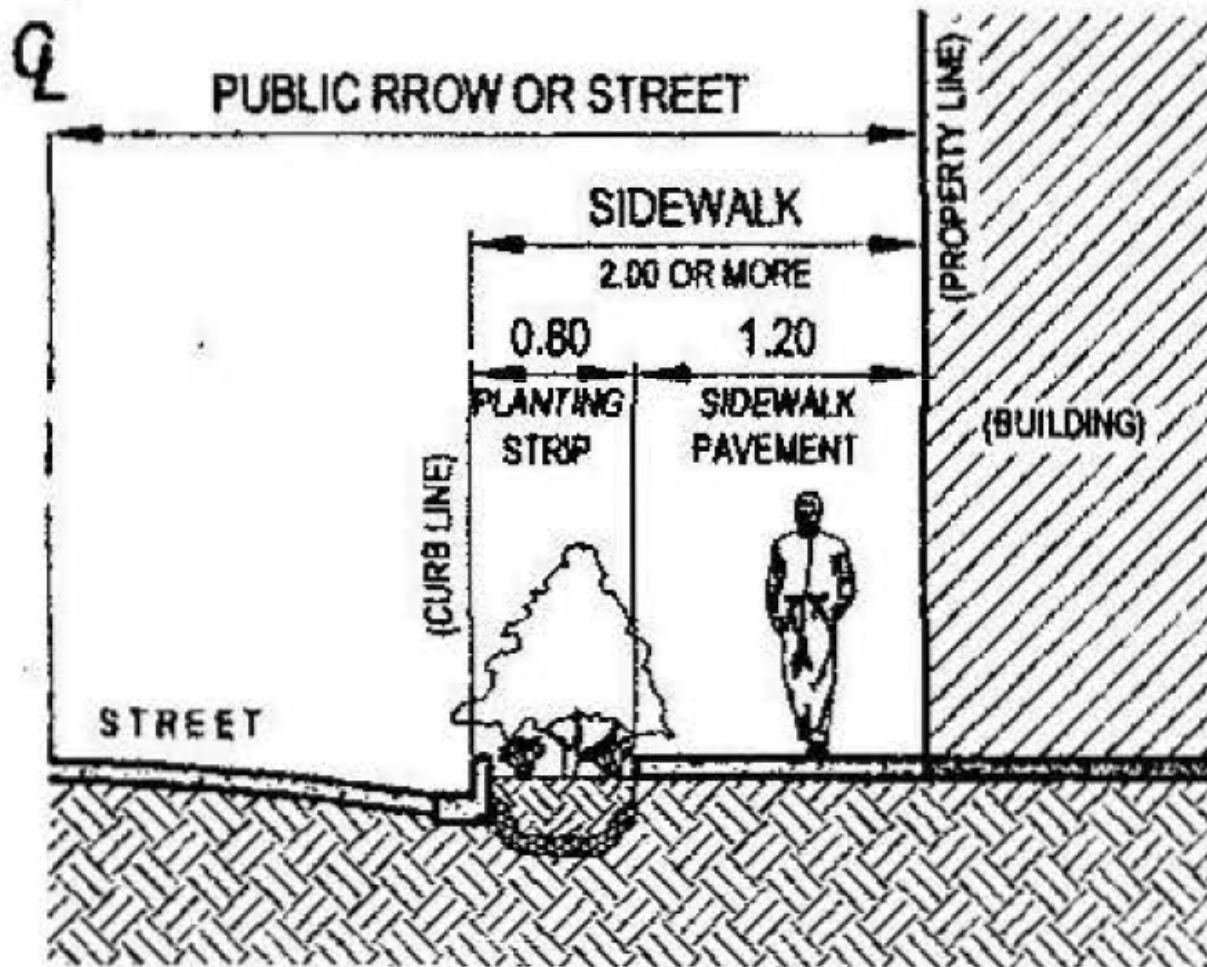
EASEMENT OF DISTANCES

Road Right of Way (RROW) Width	Range of Required Sidewalk Widths (total at both sides of RROW)	Total Minimum Widths of Planting Strip with RROW* (width per sides)
30.00 meters and above	From 1/6 to 1/4 of RROW width	1.20 meters (0.60 meters)
25.00 to 29.00 meters	From 1/6 to 1/3 of RROW width	0.60 meters (0.30 meters)
20.00 to 24.00 meters	From 1/6 to 1/3 of RROW width	0.60 meters (0.30 meters)
10.00 to 19.00 meters	From 1/4 to 1/3 of RROW width	0.40 meters (0.20 meters)
Below 10.00 meters	From 1/4 to 1/3 of RROW width	optional

* Minimum width of planting strip (for grass and shrubs) is 200mm for each side of RROW. The minimum width for planting trees is 300mm.

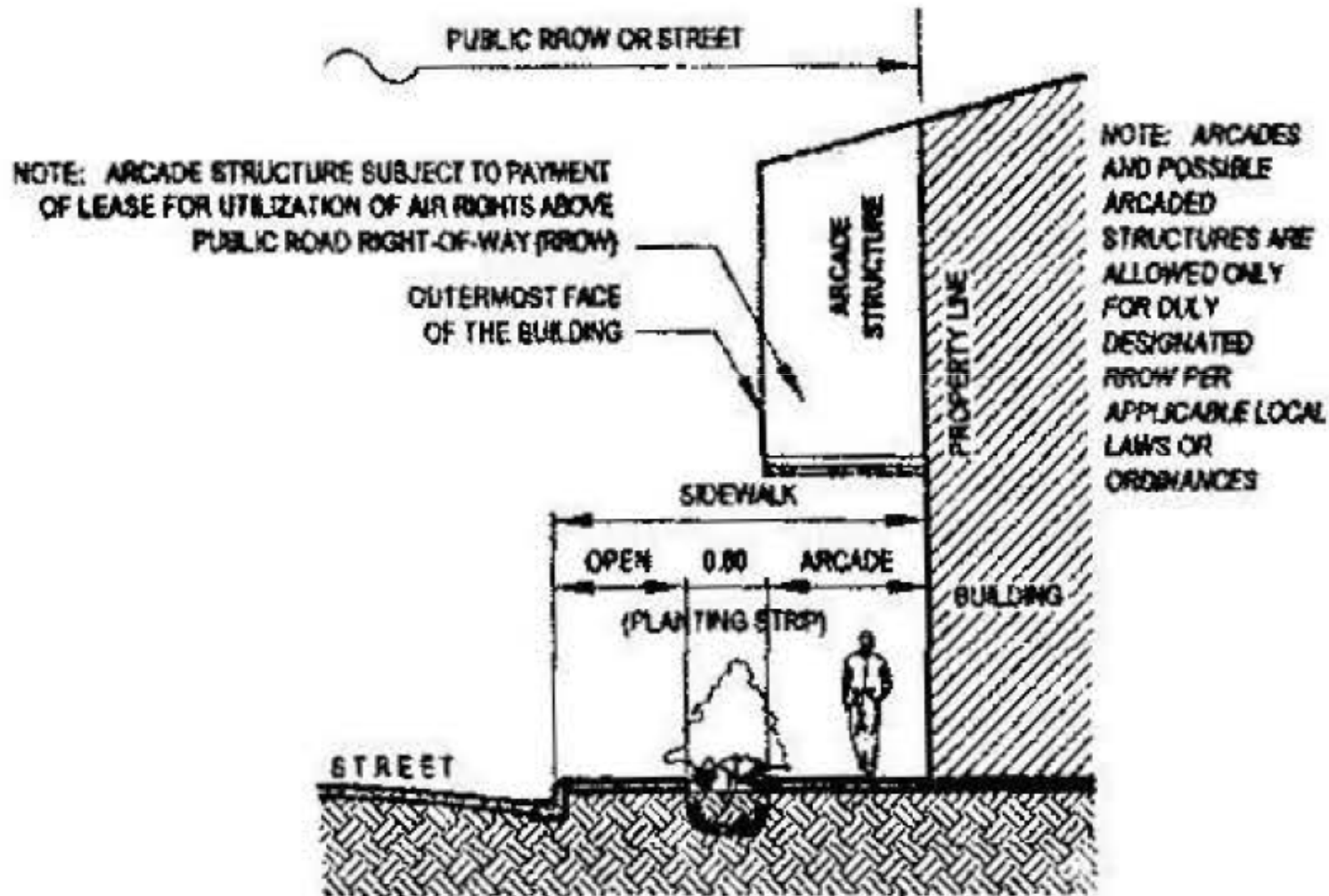


EASEMENT OF DISTANCES





EASEMENT OF DISTANCES





EASEMENT OF DISTANCES

Art. 680. If the branches of any tree should extend over a neighboring estate, tenement, garden or yard, the owner of the latter shall have the right to demand that they be cut off insofar as they may spread over his property, and, if it be the roots of a neighboring tree which should penetrate into the land of another, the latter may cut them off himself within his property.





EASEMENT OF DISTANCES



Art. 681. Fruits naturally falling upon adjacent land belong to the owner of said land.

**KANYA-
KANYANG
SALO** *principle*



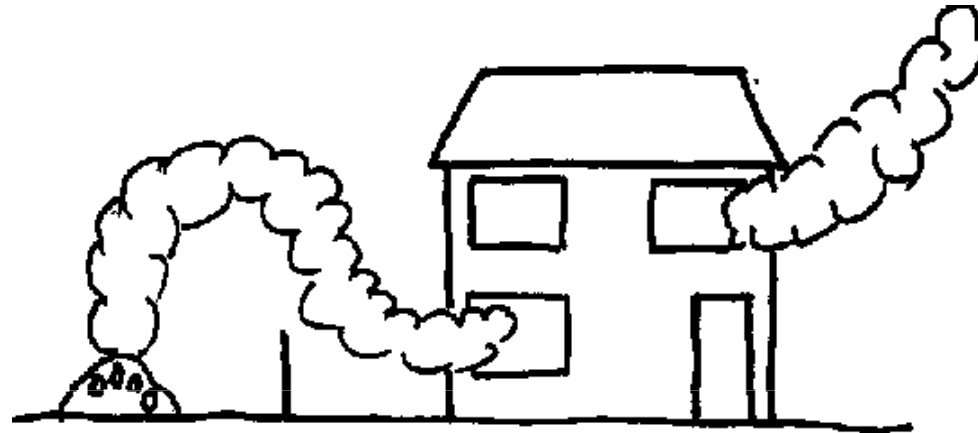
EASEMENT AGAINST NUISANCE

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Articles 682-683 of the Civil Code



EASEMENT AGAINST NUISANCE



Art. 682. Every building or piece of land is subject to the easement which prohibits the proprietor or possessor from committing nuisance through noise, jarring, offensive odor, smoke, heat, dust, water, glare and other causes.



EASEMENT AGAINST NUISANCE



Art. 683. Subject to zoning, health, police and other laws and regulations, factories and shops may be maintained provided the least possible annoyance is caused to the neighborhood.



EASEMENT AGAINST NUISANCE

Dangerous and ruinous buildings are also nuisances under P.D. 1096

Section 216. Abatement of Dangerous Buildings – When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.



EASEMENT OF LATERAL AND SUBJACENT SUPPORTS

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Articles 684-687 of the Civil Code

EASEMENT OF LATERAL AND SUBJACENT SUPPORTS



Section 1202, P.D. 1096

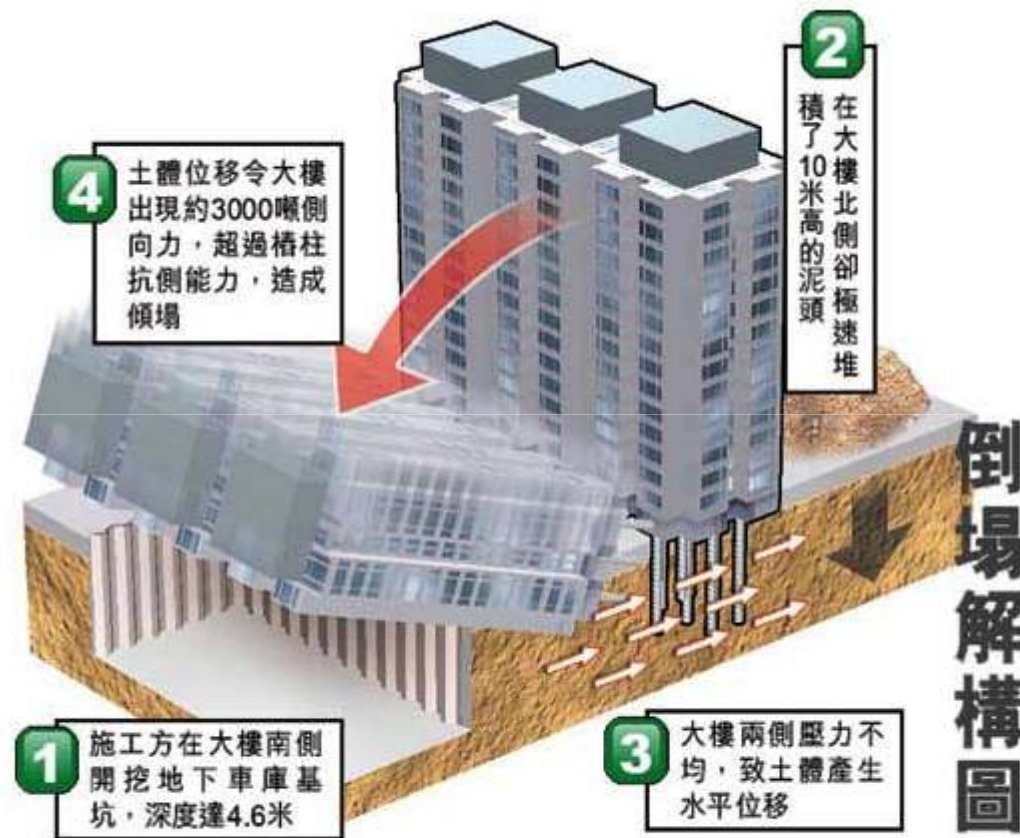
Excavation, Foundation, and Retaining Walls

(a) Subject to the provisions of Articles 684 to 686 of the Civil Code of the Philippines on lateral and subjacent support, the design and quality of materials used structurally in excavation, footings, and in foundations shall conform to accepted engineering practice.

Article 687. Any proprietor intending to make any excavation contemplated in the three preceding articles shall notify all owners of adjacent lands.



EASEMENT OF LATERAL AND SUBJACENT SUPPORTS



- (1) An underground garage was being dug on the south side, to a depth of 4.6 meters
- (2) The excavated dirt was being piled up on the north side, to a height of 10 meters
- (3) The building experienced uneven lateral pressure from south and north
- (4) This resulted in a lateral pressure of 3,000 tones, which was greater than why the pilings could tolerate. ♦ Thus the building toppled over in the southerly direction.

EASEMENT OF LATERAL AND SUBJACENT SUPPORTS



**Property
“A”**



**Property
“B”**



SUMMARY

Easement/servitude works naturally and in harmony with generally acceptable engineering practice.

Easement/servitude simply operates in common sense and fair judgment. The Civil Code merely adopted these principles.

“KANYA-KANYANG SALO” doctrine works in almost all cases of easement, but “TAPAT KO, LINIS KO” principle might be applicable as well.



Any questions?

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